

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

LYNETTE HARRIS,

Plaintiff,

2003-CV-0135

v.

KMART CORPORATION,

Defendant.

TO: Lee J. Rohn, Esq.
Wilfredo A. Geigel, Esq.

**ORDER GRANTING DEFENDANT'S MOTION REQUESTING PHYSICAL
EXAMINATION OF PLAINTIFF UNDER FRCP 35**

THIS MATTER came before the Court upon Defendant's Motion Requesting Physical Examination of Plaintiff Under FRCP 35 (Docket No. 235). Plaintiff filed an opposition to said motion, and Defendant filed a reply thereto.

Having reviewed the submissions of the parties and upon due consideration thereof, the Court finds that re-examination of Plaintiff by Dr. Pedersen is warranted. Defendant asserts that Dr. Pedersen conducted his initial examination of Plaintiff on January 25, 2005. Motion at 1. Since such examination, Defendant claims that Plaintiff "underwent a surgical procedure in August 2006." *Id.* Nowhere in Plaintiff's opposition does she deny having had a surgical procedure in August 2006. In view of the change in Plaintiff's medical

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condition after being examined by Dr. Pedersen, the Court finds that Defendant has demonstrated good cause for a second medical examination and that it would be manifestly unjust for Defendant to be forced to go to trial in the absence of such second examination.

Accordingly, it is now hereby **ORDERED**

1. Defendant's Motion Requesting Physical Examination of Plaintiff Under FRCP 35 (Docket No. 235) is **GRANTED**.
2. Plaintiff shall make herself available at a time, date, and location for such examination that is mutually acceptable to the parties. Such examination shall be completed on or before **Friday, January 11, 2007**.
3. Counsel for Defendant shall serve Dr. Pedersen's supplemental report upon counsel for Plaintiff on or before **Friday, January 25, 2007**.

ENTER:

Dated: December 12, 2007

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE